

Part 3

Execution of Sender's Payment Order by Receiving Bank

70A-4a-301 "Execution" and "execution date."

- (1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.
- (2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date can be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

Enacted by Chapter 294, 1990 General Session

70A-4a-302 Obligations of receiving bank in execution of payment order.

- (1) Except as provided in Subsections (2) through (4), if the receiving bank accepts a payment order pursuant to Subsection 70A-4a-209(1), the bank has the following obligations in executing the order:
 - (a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds transfer system to be used in carrying out the funds transfer, or the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.
 - (b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.
- (2)
 - (a) Unless otherwise instructed, a receiving bank executing a payment order may:
 - (i) use any funds transfer system if use of that system is reasonable in the circumstances; and
 - (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank.
 - (b) A receiving bank is not required to follow an instruction of the sender designating a funds transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

- (3) Unless Subsection (1)(b) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means that are reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated if the means used are reasonable in the circumstances.
- (4) Unless instructed by the sender:
 - (a) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges; and
 - (b) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

Amended by Chapter 12, 1994 General Session

70A-4a-303 Erroneous execution of payment order.

- (1) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order in accordance with Subsection 70A-4a-402(3) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.
- (2)
 - (a) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order in accordance with Subsection 70A-4a-402(3) if:
 - (i) that subsection is otherwise satisfied; and
 - (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order.
 - (b) If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.
- (3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

Amended by Chapter 237, 1993 General Session

70A-4a-304 Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in Section 70A-4a-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount that is refundable to the sender under Subsection 70A-4a-402(4) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

Amended by Chapter 237, 1993 General Session

70A-4a-305 Liability for late or improper execution or failure to execute payment order.

- (1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 70A-4a-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in Subsection (3), additional damages are not recoverable.
- (2)
 - (a) If execution of a payment order by a receiving bank in breach of Section 70A-4a-302 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by Subsection (1), resulting from the improper execution.
 - (b) Except as provided in Subsection (3), additional damages are not recoverable.
- (3) In addition to the amounts payable under Subsections (1) and (2), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.
- (4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is obliged to compensate the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.
- (5) Reasonable attorneys' fees are recoverable if demand for compensation under Subsection (1) or (2) is made and refused before an action is brought on the claim. If a claim is made for breach of the agreement under Subsection (4) and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under Subsection (4) is made and refused before an action is brought on the claim.
- (6) Except as stated in this section, the liability of a receiving bank under Subsections (1) and (2) may not be varied by agreement.

Amended by Chapter 237, 1993 General Session